



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219

[Docket DARS-2018-0056]

RIN 0750-AK18

**Defense Federal Acquisition Regulation Supplement: Small
Business Set-Asides for Architect-Engineer and Construction
Design Contracts (DFARS Case 2018-D057)**

AGENCY: Defense Acquisition Regulations System, Department of
Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense
Federal Acquisition Regulation Supplement (DFARS) to implement a
section of the National Defense Authorization Act for Fiscal
Year 2019 regarding set-asides for architect-engineer and
construction design contracts.

DATES: Effective **[Insert date of publication in the FEDERAL
REGISTER]** .

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson,
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SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 83 FR 62554 on December 4, 2018, to implement section 2804 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232). Section 2804 increases to \$1 million the threshold at 10 U.S.C. 2855 for small business set-asides of acquisitions for architect-engineer services, including construction design, in connection with military construction projects or military family housing projects. In addition, section 2804 removes the prohibition on setting aside these acquisitions valued above the threshold. As a result of these statutory changes, these acquisitions must be set aside for small business, if valued below \$1 million, and may be set aside for small business, if valued at \$1 million or more.

There were no public comments submitted in response to the proposed rule. There are no changes made to the final rule, except to add a reference to 10 U.S.C. 2855.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses or impact any existing provisions or clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is issuing a final rule to amend the DFARS to implement section 2804 of the NDAA for FY 2019. Section 2804 increases to \$1 million the threshold at 10 U.S.C. 2855 for small business set-asides of acquisitions for architect-engineer services, including construction design, in connection with military construction projects or military family housing projects. In

addition, section 2804 removes the prohibition on setting aside these acquisitions valued above the threshold. As a result of these statutory changes, these acquisitions must be set aside for small business, if valued below \$1 million, and may be set aside for small business, if valued at \$1 million or more.

No public comments were received in response to the initial regulatory flexibility analysis.

The rule applies to contract awards for architect-engineer services, including construction design. Data from the Federal Procurement Data System shows that, during FY 2017 and FY 2018, DoD awarded an average of 229 contracts per year for architect-engineer services to an average of 190 unique small entities per year. In FY 2017 and FY 2018, DoD awarded approximately 30 contracts per year for architect-engineer services valued at more than the prior threshold of \$400,000 and less than the new threshold of \$1 million. This rule requires future contracts in this range to be awarded pursuant to FAR part 19 set-aside procedures. DoD also awarded approximately 284 contracts per year for architect-engineer services valued at more than \$1 million. This rule makes it possible for future contracts at those dollar values to be awarded pursuant to FAR part 19 set-aside procedures. There are more than 27,000 small entities listed in Small Business Administration's Dynamic Small Business

Search that provide architect-engineer services. Of these entities, approximately 270 could benefit from this rule.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known, significant alternatives that would meet the requirements of the applicable statute.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 219

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 is amended as follows:

PART 219—SMALL BUSINESS PROGRAMS

1. The authority citation for part 219 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Revise section 219.502-1 to read as follows:

219.502-1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for supplies that were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program.

219.502-2 [Amended]

3. Amend section 219.502-2, in paragraph (a)(iii), by removing "of under \$400,000" and adding "under \$1 million (10 U.S.C. 2855)" in its place.

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